likely to be used for building purposes (section 54), and the provisions of a scheme must relate to the carrying out of such objects (section 55). Subject to this condition the provisions may apparently deal with any of the matters mentioned in Schedule IV of the Act and may suspend so far as is necessary for the proper carrying out of a scheme any statutory enactments, bye-laws, regulations, or other provisions, under whatever authority made, which are in operation in the area included in the scheme, provided that a scheme containing any provisions suspending any enactment contained in a public general Act shall not come into force unless a draft thereof has been laid before each House of Parliament for at least forty days and no objection is taken to it by either House. The only means of ensuring the equity of the provisions finally approved by the local authority is the necessity to obtain the sanction of the Local Government Board to them. Before giving such sanction, the Board has to publish a notice of their intention to grant the same. If no objection is then made within 21 days the sanction becomes operative, but if an objection to the scheme is made in the prescribed manner then the draft order sanctioning it is laid before each House of Parliament for a period of not less than 30 days, and if either of those Houses presents an address to His Majesty against the draft or any part thereof no further proceedings can be taken thereon. A fresh draft scheme however can be prepared *de novo*.

V.—Betterment.

7. A very important section of the Act is 58 (3) which deals with the subject of betterment and gives the local authority a claim to one-half the betterment due to the making of a scheme. As regards the interpretation of the section the Local Government Board have expressed an opinion that "apart from exceptional cases the question whether any property is increased in value within the meaning of the section will depend upon a comparison of the full value of the property immediately prior to, and irrespective of, the making of the scheme with the full value of the property immediately after the making of the scheme." In other words, it seems to be the increase that takes place between the date of a local authority's first resolution to prepare a scheme and the date of the Board's approval of such scheme. Thus when once a scheme has been sanctioned the whole increase in value of a property due to a scheme may be divided into the increase that accrues by the mere making of the scheme and the increase that accrues after the date of approval of the scheme, *i.e.*, to the actual working out of the scheme. Under the first draft of the Act as passed by the House of Commons the local authority was to be entitled to claim the whole increase due to the operation of the scheme. Discussion in the House of Lords took place on the difficulty of estimating the increase in value of property due to the operation of a scheme before the works had been executed, which in some cases might be after several years, and also on the propriety of claiming the whole amount of such increase. An amendment was then agreed upon to substitute the word "making" for "operation." After obtaining this great concession from Government the House of Lords passed a a further amendment that instead of taking the whole of such increase in value the amount taken should be "such proportion of the expenditure of the authority as, failing agreement, in the opinion of the arbitrator has increased the value of such property." This amendment referred to the section as it stood in the original draft, *i. e.*, before the word "operation" had been changed to the word "making," but it was debated upon and passed in the House of Lords after such change of words had been made. It was rejected however by the House of Commons, where it was argued that in some cases a local authority might spend very little on a scheme and the land would be enormously increased in value, and in other cases the local authority might spend a great deal of money and the land would rise but little in value. A compromise of taking up to one-half the betterment was then proposed by Government and finally passed. When the Bill was returned to the House of Lords, Earl Beauchamp said that "the view of His Majesty's Government was that the whole matter was surrounded with a great deal of difficulty and that under the circumstances to put down one-half was to make one of those compromises so dear to the hearts of our countrymen. His Majesty's Government would have preferred the Bill as it

was originally introduced, but in view of the objection taken we have inserted this in the hope that it will not prove entirely unacceptable" : to, which the Marquess of Salisbury replied, " In my opinion His Majesty's Government have adopted this one-half compromise on the principle of any port in a storm and no other. They have not been to able to defend the fraction of one-half, nor have they been able to explain what it is a half of. This particular proposal can only be taken to be a provisional arrangement. If it turns out by good luck to work well perhaps it will remain," etc. The words of the Lord Chief Justice, Lord Alverstone, during the debate on this point are well worthy of record to show what an eminent lawyer thought should be the amount of " betterment " that a local authority is entitled to claim. He said that " as he had to deal with this question (*i.e.*, of betterment) hundreds of times, might he point out that the only logical course was that suggested by the noble Marquess (*i.e.*, to apportion only the actual expenses amongst those who benefit from a town-planning scheme). They were not considering the taxation of increment value, or the putting on of a land tax, but how much ought to be paid because a man's property was benefitted by a particular improvement scheme called a town-planning scheme. That kind of question had been considered by skilled arbitrators for many years. The Government without giving the slightest reason say that one-half the increased value was to go into the pocket of the local authority. Why ? Nobody could suggest why one-half more than 10 per cent. If the local authority had spent £10 and that had improved the property of A, B, C and D round the planning scheme the expense of the local authority ought to be borne by owners in such proportion as an arbitrator considers just." This is exactly what has been proposed in our own draft Bill with the additional safeguard that the amount to be borne by any particular owner should not exceed one-half the increase in value to his property due to the scheme. It might be argued with reason that the contribution of a particular owner towards expenses should be limited to the whole amount of his betterment and not to only one-half of it, but in so limiting the amount claimable to one-half the increase in value the precedents of the English Town Planning Act and the Acts relating to the London County Council improvement schemes of Kingsway and the Tower Bridge approach have been followed. Such limitation covers the possibility of a general rise in the value of properties and is analogous to the policy in Sálsette of limiting the demand on building plots for purposes of Government assessment to one-half their situation values. It more than compensates him for the loss of the additional 15 per cent. that he would get under the Land Acquisition Act, but does not get under our Town Planning Bill, for any land that is taken from his plot for a road or other public purpose. In actual practice the principal use that is being made of the power to claim betterment under section 58 (3) is to induce owners to agree to forego their claim to compensation for injury under section 58 (1) and also to effect compromises generally.

8. In both the schemes that have been finally approved, the Birmingham Corporation undertake to construct certain streets, in the first instance, entirely at their own cost ; and there is an interesting provision in the schemes imposing a charge towards the construction of those streets upon the owners of lands which front upon them. Thus, in the Quinton Scheme, Provision 11 lays down in respect of such streets that the owner of any land deriving benefit therefrom shall pay to the Corporation (unless the Corporation otherwise agree with him) as soon as his land is rated at non-agricultural rates a contribution towards the cost of construction not exceeding £3-10-0 per lineal yard of his frontage on the new street or (at the option of the Corporation) equal to such sum as may represent the degree of benefit accruing to his land whether fronting on or communicating with the new street. The mere making of a provision in a town-planning scheme for the construction of streets at the expense of the Corporation relieves an owner of an estate of the cost of making such streets when he wishes to develop his property, and the local authority can fairly lay claim under the Act to their share of the ' betterment ' resulting therefrom. In case the owner never wishes to build he will not be charged under Provision 11 any amount on account of the costs of road construction. In case he does wish to build and considers that the amount with which he is charged exceeds half the

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on 31 October, 2019

betterment to his property due to the making of the scheme he will be entitled to receive the amount of such excess from the Corporation; whereas if the amount with which he is charged falls short of half such betterment then the Corporation will be entitled to claim the difference from him.

The provision is interesting in that it is an instance of a scheme prescribing a first instalment of 'betterment' from certain owners, and leaving it open for an owner or the local authority to prove, if either of them so desire, that the amount so charged is in excess of, or is less than, half the owner's betterment due to the making of the scheme.

9. In connection with the subject of "betterment" it would be useful to describe briefly how it is dealt with in (*a*) the Finance Act, 1910, (*b*) the Kingsway Improvement Scheme Act, and (*c*) the German Laws of 1893, 1911 and 1913:—

(*a*) *The Finance Act, 1910.*—The main object of this Act as regards betterment is to enable the State to claim some portion of the increment in value that accrues to land through no effort on the part of the individual owner. Amongst other things the Act deals with the duty on unearned increment, the tax on undeveloped land, and reversion duty. The unearned increment duty is payable when an owner of land dies, or sells his land, or leases it for a term longer than 14 years. Its amount is 20 per cent. of the increase in the value of the land which has accrued since 30th April 1909, deduction being made for the cost of improvements effected by the owner since that date and for any amounts paid by him by way of road making, or of "betterment" under a Town Planning or other Act, or on account of any unearned increment duty already paid. The tax on undeveloped land is levied upon the difference between the market value of land and its agricultural value, subject to a maximum of £50 per acre for the latter. The amount of the tax is one halfpenny in the pound and a periodical valuation of undeveloped land is to be made every fifth year. This tax goes beyond a tax on what is called in the Rules under the Bombay Land Revenue Code "situation value," which is the difference between the market value and agricultural value of land, whatever the latter might be.

Reversion duty is payable when land reverts to an owner at the expiration of a tenant's lease. A duty of ten per cent. is payable on the increase in the value of the land that has accrued during the tenancy of the lease. If an owner sells or re-leases the land immediately on its reversion to him he will have to pay unearned increment duty, but any amount already paid by him by way of reversion duty is deducted.

The unearned increment leviable under the Finance Act may be due to any cause whatsoever. It may have no connection whatever with any town-planning scheme, and on the other hand it may be solely due to a town-planning scheme. Although the Town Planning Act gives no power to a local authority to claim betterment due to the operation as distinct from the making of a scheme, the Finance Act gives the State power to levy 20 per cent. of such betterment. Section 91 of the Finance Act contemplates a portion of this betterment going to the local authority within which the land is situated, but for the present that section remains inoperative.

(*b*) *The Kingsway Improvement Scheme.*—This scheme was carried out by the London County Council which obtained a special Act of Parliament for the purpose, and it consisted of opening out a broad thoroughfare 100 feet wide connecting Holborn and the Strand. The Act gave the Council power to acquire certain lands and houses; the cost of such acquisition, together with the cost of constructing the road, was borne in the first instance by the Council, but they are recouping themselves by the sale of a certain number of frontages which they acquired and by levying, under the Special Act, 3 per cent. on one-half the "betterment" derived by the lands included in the scheme area. The betterment was fixed by the Council after the completion of the scheme, and an owner has the right

to redeem his betterment tax at any time on payment of 33 times its amount. If an owner consider that the Council has over-estimated his betterment he may compel the Council to buy his property at their own valuation. The "betterment" of which ½ is leviable must be due to the scheme and is measured by the increase in the site value of any land as estimated before the works are started and without reference to the improvement contemplated and as estimated at any time not less than 1 year and not more than 3 years after the completion of the works. An owner who is charged for "betterment" on any land may claim a deduction for any injury that may have been caused by the scheme to any other land that he might possess within the scheme area, but if the Council make no demand for betterment there is no provision in the Act entitling an owner to claim compensation for injury.

*(*c*) *The German Laws of 1893, 1911 and 1913.*—The power to levy taxes on the market value of land and buildings and to take a portion of the unearned increment of value of land was given to Prussian towns first in the year 1893 by the *Kommunalabgabengesetz.* The proportion of the increased value to be taken was not to exceed 30 per cent. The law was permissive and the power both to tax on real value and to take part of the unearned increment had, up to the year 1911, been used by several hundred towns, but not by a very large proportion of the whole number.

The German Imperial Increment Duty Act of 1911 (*Das deutsche Reichszuwachssteuergesetz*) is a compulsory law and corresponds to the English Finance Act, 1910. It prescribed a tax on the increase of value of land which has taken place without any effort on the part of the owner and is leviable when the ownership of land is transferred. The proportion of increment taken as tax is regulated by a sliding scale, subject to a maximum of 30 per cent. and the proceeds of the tax were divided between the Empire, State and local authority, the Empire receiving one-half, and the local authority 40 per cent. The remaining 10 per cent. goes to the State for its expenses in collecting the tax.

In July 1913 the Increment Duty Act of 1911 was amended. The levy of the Imperial share of 50 per cent. was then cancelled and the States of the Empire were authorized to revise the method of taxation of increment. The Empire, however, on the same date secured another source of revenue by means of an Act providing for a single extraordinary defence contribution for the purposes of the Army and Navy. This Act does not provide for the taxation of increment value but taxes (i) the value of property both movable and immovable and (ii) income. Property and incomes not exceeding certain amounts in value are exempt. The collection of this extraordinary contribution is spread over 3 years, but from 1st April 1917 the Empire will receive a permanent source of income under the Property Duty Act, also passed in July 1913. This imposes a tax on the increase in value of property both movable and immovable. The increment is to be determined first on April 1st, 1917, for the rise in value which has taken place during the previous three years, and thereafter subsequent increases will be periodically determined every three years. The collection of the tax on this triennial increment is also spread over a period of three years.

VI.—Reservation of land for public purposes.

10. Provisions may be made in a scheme regarding public parks and open spaces. In practice the local authorities are arranging either for the immediate acquisition of the necessary land or for its acquisition by them in the future by means of an agreement made with the owner at the time of preparing the scheme. No case was found where land was merely being reserved by a scheme as a public park without arrangements being made either for its present or future acquisition. If land be merely reserved for a future public park, the owner would not be allowed to build upon it and in England he would naturally claim compensation for such a restriction of his rights. The amount

* I am indebted to Mr. Horsfall and Mr. Kissan, I. C. S., for information on the German Laws.

of such compensation payable to him would apparently be the potential value of his land for building purposes, and as in growing districts this is generally large compared with the agricultural value it would not be much less than the cost of acquiring the land outright, whether by agreement or by the use of compulsory powers. This is clearly a more satisfactory arrangement than paying for the potential building value of the land when the scheme is introduced and afterwards having its agricultural value assessed by an arbitrator when possession of the land is actually required for park purposes. If land is acquired by a local authority for park purposes, but is not immediately required, there would be no objection in providing for leasing it out until such time as it was so required. The mere reservation of land for road purposes, however, without its immediate acquisition, is being made in the schemes in progress. In this case the restriction of an owner's rights is very small, in the case of large estates, compared with an absolute prohibition of the use of a large portion of his land for building purposes. The compensation that an owner can claim under such circumstances has already been mentioned (paragraph 3) as well as the set-off that the local authority might claim by way of betterment. It is thus seen that a scheme may provide for the mere reservation of land for public purposes and may also provide for its immediate or subsequent acquisition.

VII.—Re-arrangements of plots.

11. The sanctioned schemes for Birmingham deal with the adjustment of boundaries of estates. Thus Provision 23 (*a*) of the Quinton scheme says "It shall be lawful for the Corporation for the purposes of securing the proper laying out or development of any estate or lands to require that provision shall be made for adjusting and altering the boundaries of any such estate or lands or any lands within the area adjacent or near thereto, and for effecting such exchanges of land as may be necessary or convenient for such purposes, and the provision to be so made shall, failing agreement between the Corporation and the respective persons interested in such estates or lands, on the application of the Corporation or any such person, be determined by an arbitrator to be appointed by the Board (*i. e.*, the Local Government Board), and the Corporation may, for securing the execution of any such purposes, agree to pay and may and shall pay to any such person or persons such sums as may be agreed upon or, in default of agreement, be determined by arbitration as aforesaid, provided that the payment of money by any such person shall not be made a term or condition of any award made under this clause otherwise than with his consent," and Provision 23 (*d*) lays down that "For the purpose of the adjustment or alteration of the boundaries of any estates or lands the Corporation may themselves purchase, subject to the provisions of the Town Planning Act, any land, and may sell or lease the same in whole or in part at such time or times, at such price or prices, and on such conditions as they may think fit."

The power contained in Provision 23 (*a*) above is also to be found in some local Acts (*e. g.*, Sheffield, St. Helens) but the Provision 23 (*d*) gives the Birmingham Corporation power to buy a portion of the land concerned and to sell it to anyone they wish, and therefore to a neighbouring owner or to any person dispossessed of land required for the purposes of the scheme. Under Provision 23 (*a*) an owner can be forced to have the boundaries of his land altered in such manner as the arbitrator may direct, but there is no provision in the scheme whereby an owner dispossessed of land required for the purposes of a scheme can be forced to accept another plot of land in whole or part payment for the land relinquished by him. This would amount to the forced payment of compensation in kind, which would perhaps be not possible under the Act. Provision 23 (*a*) provides that the payment of money by an owner whose boundary is adjusted shall not be made a term or condition of any award made by the arbitrator except with such person's consent. There seems nothing, however, to prevent a local authority claiming under section 58 half any increase in the value of a plot that results from such an alteration of its boundaries and in some cases the increase may be considerable. For instance, the two triangular plots formed by the diagonal of a square plot which fronts upon a road would be much increased in value if the common diagonal boundary were altered so as to be at right angles to the road.

An interesting scheme of re-distribution is being attempted at Inverkeithing in Scotland. There is a parallel series of narrow strips of land called 'roods,' which the local authority are attempting to re-arrange so as to obtain plots of suitable width for building purposes. Each rood is from 300 to 400 feet long and the widths vary from 18 feet to about 200 feet. The local authority are attempting to effect the re-arrangement by agreement with owners, whereby the owners consent to the reservation of certain land for roads and to the division of the remaining land by an independent arbitrator into plots which are either proportional to the original holdings in area or value or in area and value combined as the arbitrator may determine. In other words, the arbitrator is to be given practically a free hand to allot the new holdings as he thinks just. Some of the owners have already agreed to the terms. If the majority of owners agree, presumably it will be open to the local authority to acquire the roods of the remaining owners if they wish to carry out the scheme in its entirety. It is not clear from the draft agreement already sent to owners whether the road-land is to be handed over to the local authority, nor is there any mention in the agreement as to the payment of the costs of road construction. In the agreement the owners are to approve of certain projected roads and also to accept their re-distributed holdings as full equivalents for their existing holdings. They therefore will have no rights of ownership left over the road-land, but as the agreement does not force the local authority to adopt the roads, the holders of the re-distributed holdings will apparently be responsible for their proper construction under the Public Health Act before the local authority take them over. Even supposing that the land set apart for roads is taken over by the local authority when the re-distribution takes effect, a provision can still be made in the town-planning scheme to charge the holders for the expenses of construction if the precedent of the two sanctioned Birmingham schemes be followed. The expenses connected with the actual work of re-distribution (*i. e.*, fee to arbitrator, etc.) are to be divided amongst the holders in proportion to the areas of their original holdings.

VIII.—How local authorities' expenses are met.

12. Any expenses to be incurred by a local authority in connection with a town-planning scheme can be met from the general rates. In England the rates are fixed by a mere resolution of the local body and there is no limit to the amount to which they can be raised. In Scotland there is a limit of one shilling in the pound. For capital works a local authority can borrow, with the sanction of the Local Government Board, up to an amount of twice the assessable value of the premises within its jurisdiction, but this limit may be exceeded when a loan is required for the purposes of a town-planning scheme (section 65). The usual method of raising a loan is to obtain it from a local bank.

IX.—Roads.

13. (*a*) *Road-land.*—Local authorities do not generally pay compensation for the land included in roads which open up an estate. The owner of the estate generally provides the road-land and the purchasers of the plots which front upon the roads are liable to pay for their proper construction. When the roads have been put in a proper state of repair, the owner of the estate and the holders of the plots are only too anxious for the local authority to take over the road and maintain it. If the local authority requires an owner to provide a road of greater width than that required by the local bye-laws, or if they wish a road through an estate to be constructed before the owner wishes to construct it himself, they endeavour to effect an agreement whereby the owner surrenders any extra land required and the local authority bears some portion of the expense of construction. An owner wishing to develop his estate must provide the road-land of the width required by the bye-laws and he generally lays down the drains and does the work of the first make-up of the road. The cost of these works affects the price at which he is prepared to sell his plots and an intending purchaser of a plot in estimating its value takes into account the probable amount he will be called upon to pay for constructing

the road before it is taken over by the local authority. If a local authority wishes to construct a road to which the owner of any land through which it passes objects, the local authority may be empowered to purchase the land they require compulsorily, but they are obliged to pay for the road-land and also for its construction, and cannot recoup themselves by levying a charge upon the fronting plots. Under the Development and Road Improvements Act, 1909 (*vide* (*c*)), the Road Board may acquire compulsorily, in addition to the road-land required, any portion of land on either side of a proposed road within 225 yards from the middle line of such road. This power enables them to recoup themselves for the cost of road-land and for the construction of the road by the sale of plots which front upon it. Under a town-planning scheme the local bye-laws may be varied as regards the width and materials of roads, but there is no provision in the two schemes already sanctioned which enforce any charge upon the fronting plots for the cost of road-land acquisition (*vide* para. 8). As estates are generally large, the majority of owners willingly surrender the necessary land if, and when, the road is to be constructed by the local authority, provided they have come to a satisfactory agreement with the local authority as regards alignment.

(*b*) *Road construction.*—An Act was passed in the year 1532 for the "paving of the streetway between Charing Cross and Strand Cross" at the charge of the owners of the land through which it passed. The street had been in existence some hundreds of years before that time and had been previously repaired from public funds. The Act is therefore an ancient instance of throwing the burden of repairing an existing public street upon the owners of land which front upon it. At the present time the power of doing this still vests in the local authorities within the County of London and also with some local authorities outside London under local Acts of their own, but under the Public Health Acts which apply to the large majority of towns a local authority can only insist upon those streets that have not been adopted being paved at the cost of owners, and when once they consent or are forced to take over a street they are responsible for its future maintenance. Until the year 1836, as soon as an owner threw open a new street or road to the public, and it was used by them as a highway, the public became at once liable to repair it for all time. This state of things threw an unfair burden on the general body of ratepayers and it was remedied by the Highway Act of 1835. The effect of this Act was that if an owner of land laid out a new street the public did not become liable for its maintenance unless and until it had been properly made and formed. The Act did not go far enough, for there came into existence a large number of streets for the paving of which nobody was responsible. To rectify this state of affairs further Acts were passed in 1848, 1875 and 1892. The Acts of 1875 (Public Health) and 1892 (Private Street Works) are those under which local authorities, except those within the County of London, control the construction of roads at present. Some local authorities use the powers in the former Act and others use those of the latter Act, but a local authority must choose either one or the other Act to work under and cannot have powers under both Acts. Under the 1875 Act the owners of plots which front on a private road which is not properly constructed are first called upon to put the road in order, and on their failure to do so, which is usually the case, the local authority execute the work and apportion the cost according to the lengths of the frontages of the several plots upon the road. Under the 1892 Act the local authority first gives notice to the plot owners of their intention to execute the work of construction and after hearing any objections on certain specified matters may proceed to do the work and apportion the costs either according to the lengths of the frontages or in accordance with the various degrees of benefit derived by the several properties from the construction of the road. Under the Act of 1875 a local authority cannot be compelled to adopt a private street which they have caused to be put in proper repair, and may, in fact, cause a street to be repaired from time to time without taking it over as a highway repairable by them, but as a matter of practice a private street is usually adopted by a local authority when once they have caused it to be properly constructed in accordance with the bye-laws. Under the Act of 1892 a local authority can be compelled to adopt and maintain a street when once it has been put in order by them.

As long as a landowner obeys the local bye-laws he may in general align his roads as he desires. He is bound by the bye-laws to construct them in a particular manner, but there is no period fixed within which he must construct them in such manner. The usual practice is for an owner to do the work of the "first make-up" of a road, and to leave to the local authority when they consider it necessary the work of putting it in proper order at the expense of the purchasers of his plots. One great drawback in the working of the Act of 1875 is that after the local authority have put a road in order at their own expense it is open to the owners to object to pay their road charges on the ground that the road is a highway repairable by the inhabitants at large. Local authorities have been involved in much litigation and expense in this respect, and one of the advantages of the Act of 1892 is that such an objection is decided before, and not after, the work has been done.

In the County of London the Metropolis Management Act of 1855 with its amending Act of 1862 is in force which confer greater powers upon the local authority than those given by the two abovementioned Acts. The sections dealing with the construction of streets are as follows :—

Section 105 (Act of 1855).—"In case the owners of the houses forming the greater part of any new street laid out or made or hereafter to be laid out or made, which is not paved to the satisfaction of the vestry or district board of the parish or district in which such street is situate, be desirous of having the same paved, as hereafter mentioned, or if such vestry or board deem it necessary or expedient that the same should be so paved, then and in either of such cases such vestry or board shall well and sufficiently pave the same, either throughout the whole breadth of the carriage-way and footpaths thereof, or any part of such breadth, and from time to time keep such pavement in good and sufficient repair; and the owners of the houses forming such street shall, on demand, pay to such vestry or board the amount of the estimated expenses of providing and laying out such pavement (such amount to be determined by the surveyor for the time being of the vestry or board); and in case such estimated expenses exceed the actual expenses of such paving, then the difference between such estimated expenses and such actual expenses shall be repaid by the said vestry or board to the owners of houses by whom the said sum of money has been paid; and in case the said estimated expenses be less than the actual expenses of such paving, then the owners of the said houses shall, on demand, pay to the said vestry or board such further sum of money as, together with the sum already paid, amounts to such actual expenses."

Section 77 (Amendment Act, 25 and 26 Vic. c. 102).—"Where any vestry or district board shall, under the powers given by section 105 (*supra*), have paved or be about to pave any new street, the owners of the land bounding or abutting on such street shall be liable to contribute to the expenses or estimated expenses of paving the same, as well as the owners of houses therein: provided that it shall be lawful for the vestry or district board to charge the owners of land in a less proportion than the owners of house property, should they deem it just and expedient to do so, and any such costs or expenses, including the cost of paving at the points of intersection of streets and all other incidental costs and charges shall be apportioned by the vestry or board, and shall be recoverable either before the work shall be commenced or during its progress or after its completion, and it shall be lawful for the vestry or district board at their discretion to accept payment of the amount apportioned or charged in respect of each house or premises by instalments spread over a period not exceeding twenty years; and any such amount shall be recoverable from the present or any future owner of the premises by action at law, or in a summary manner before a justice of the peace, at the option of the vestry and board."

The expression "new street" in the above sections is not limited to private streets. A street is defined (section 250 of Act of 1855) as applying to and including any "highway . . . . and any road, bridge (not being a country bridge), lane, footway, square, court, alley, passage whether a thoroughfare or not, and a part of any such highway, road, bridge, lane, footway, square, court,

alley or passage," and the expression "new street" is to apply to and include (section 112, Act of 1862) "all streets hereafter (*i. e.*, after August 7th, 1862) to be formed or laid out and a part of any such street." The expression "new street" may therefore refer to a road, whether public or private, old or new. It means "a place which by change of circumstances has within some indefinable period—you cannot say how long, but recently—acquired by building a new character" (per Wills, J., in Cross *vs.* Wandsworth Board of Works (1898), 62 J. P. 807, L. T. 351). The following have been held to be new streets within the meaning of the above sections:—

(i) A modern road made under statutory powers through agricultural land in 1877. In 1890 houses were erected on one side of the road and 1891 on the other side. (Allen *vs.* Fulham Vestry.)

(ii) An old country lane repairable by the parish from time out of mind, along which houses were erected between the years 1855 and 1874. (Dryden *vs.* Putney Overseers, 1876.)

There is no limit of time after the completion of the paving within which the apportionment of expenses must be made, but it is the usual practice to apportion and collect the estimated expenses of construction before the work is taken in hand. The local authority has full power to apportion the expenses of construction in any manner they think fit, but the general method under the above sections and also under the Acts of 1875 and 1892 is to apportion them according to the length of frontage of each plot upon the road which is being constructed. This method may hit certain owners badly at times, but the general opinion seems to be that it has been on the whole successful. A long narrow strip of land which fronts on a road and on which it is impossible to build may be charged very heavily for road construction expenses, but the owner naturally includes any such charge he may have paid in the price at which he is willing to sell such strip, and if the road charges on such strip have not been paid by the owner an intending purchaser estimates their probable amount in calculating the sum which he is prepared to give for it.

(*c*) *Development and Road Improvements Act, 1909.*—Under this Act a Road Board has been established to which has been assigned certain powers and the income derived from the motor spirit duties and motor-car licenses. Its members are appointed by the Treasury and they have power, with the approval of the Treasury, to construct and maintain any new roads, to make advances by way of a grant or loan to local authorities in respect of the construction of new roads and the improvement of existing roads other than ordinary repairs, and, where advances have been made, to make arrangements with local authorities as regards the cost of maintenance of new roads. The Board have large powers in regard to the acquisition of land. Not only may the land included in the road be acquired but an additional strip of land on either side and within 225 yards of the middle line of a proposed road may also be acquired compulsorily, and any question of disputed compensation is to be determined by a single arbitrator appointed by the Lord Chief Justice. In determining the amount of disputed compensation, no allowance is made on account of the purchase being compulsory, and the arbitrator must have regard to the extent to which the remaining and contiguous land belonging to the same proprietor may be benefitted by the proposed road, and in the case of the acquisition of buildings the Board are not obliged to buy a whole building if the arbitrator is of opinion that the portion required can be severed without material detriment thereto, but compensation for severance must be allowed by the arbitrator.

To summarise this paragraph it is seen that owners provide the land required for roads which open up their estates; that local authorities generally arrange with owners to surrender any road-land which they may require; that a local authority may acquire land compulsorily for a road, but in that case the cost of acquisition falls wholly upon them; that the Road Board have power to acquire not only the land necessary for a proposed road but may acquire any land on either side of the road within 225 yards of its middle line; that under a town-planning scheme it may be possible to acquire road-land and to charge

the cost of acquisition to the owners who benefit from the construction of the road, but the only two schemes that have been sanctioned do not include such a provision; that as regards the actual construction of roads, local authorities can insist upon this being done at the cost of the owners which front upon them in the case of roads that have not been adopted as highways repairable by the inhabitants at large; that in the County of London and some other towns a local authority may cause roads whether private or public and hitherto repairable, by them *qua* highways to be constructed at the cost of the owners of land which front upon them; and that in the sanctioned schemes under the Town Planning Act provisions have been made, giving the local authorities power to recover a certain amount towards the cost of construction from the owners of plots which front upon the road and who benefit by such construction.

X.—Valuation of 'betterment.'

14. In the Bombay Town Planning Bill, as first introduced, a first estimate of the amounts of the relative benefits derived by landowners from certain contemplated works was to be made before such works are executed. In this connection it is useful to note (*vide* para. 13) that not only a first estimate but a final relative apportionment of the costs of construction of a road can be made by a local authority under the Metropolis Management Act in collecting the estimated costs of such construction before the work is actually taken in hand. Again, in the acquisition of land compulsorily for the purpose of a projected road under the Development and Road Improvement Act, 1909 (*vide* para. 13) the arbitrator in estimating the amount of compensation payable to an owner for his land must set off against such amount the estimated value of the benefit derived from the projected road of the remaining and contiguous land of the same owner. A similar provision is also to be found in the Liverpool Corporation Act, 1908 (section 10). In the Housing of the Working Classes Act, 1890, where an insanitary building is ordered to be demolished, if the arbitrator appointed to fix the compensation payable on account of the demolition considers that the values of certain other buildings will be increased by such demolition, he must estimate the amounts of such increases, in order that the local authority may levy them from the owners or occupiers as a contribution towards the cost of the demolition. The Italian Expropriation Act, 1865, affords an interesting example of the power to pre-value the benefit that will accrue to certain lands by the operation of a scheme, but gives an owner the right to force a local authority to buy the whole of his plot if the benefit demanded exceeds a certain amount. The Act lays down that if the whole of a property be compulsorily taken, an indemnity equal to the price that would ordinarily have been obtained must be paid. In the event of only a portion of the property being taken, the amount of the indemnity is to be assessed at the difference between the estimated value of the property as a whole in its original state and the estimated value of the residue when the expropriated portion has been duly annexed, and the amount of the indemnity is to be reduced by the estimated value of the benefit accruing from the improvements contemplated to the unannexed property of the same owner, but in the event of the benefit being assessed at a greater sum than the value of one-quarter of the indemnity the expropriatee can force the local authority to buy the property at a reasonable and just price. This law is said to have caused hardships in actual practice, and there is no wonder at this if the local authorities are not anxious to purchase plots. Take the cases of a large plot from which a small portion is included in a projected road and a smaller plot from which a larger portion is included. If the local authorities were content with demanding as a set-off to the indemnity a legal limit of one-quarter the value of such indemnity, then the smaller plot which benefits less would contribute much more than the larger plot which benefits more. In our Bill the amount of the indemnity that is credited to an owner is estimated in exactly the same way as under the Italian Act but the set-off is limited to one-half the benefit accruing to the unannexed portion of the land from the contemplated works and purposes of the scheme. Such benefit represents the true unearned increment.

XI.—A NEW ACT.

15. A Town Planning Act has recently been passed by the Government of Nova Scotia. It is a short Act of 15 sections and follows closely the wording of the English Act, except that Government control over schemes has been practically eliminated and the local authorities are given power to draw up schemes in the way they think best. There is no 'betterment' clause in the Act, but compensation is payable by a local authority to any person whose property is injuriously affected by the making of a scheme. A novel feature of the Act is the power given to a local authority of causing a Company to be formed for carrying into effect a scheme in which it is proposed to erect buildings for housing purposes and to guarantee the bonds of such Company up to a limit of one-half the capital required for the enterprise.

XII.—SUGGESTIONS.

16. *Agreements.*—In England it seems generally considered that for a successful town-planning scheme it is important to obtain as much agreement as possible between all the parties interested, and in the schemes now in progress the local authorities are endeavouring to effect compromises with owners on all points, and to promote agreements between one owner and another in the method of developing their respective estates. The Town Planning Act and the local Acts bearing on the subject of town-planning arm local authorities with important powers which they endeavour to use with discretion, and principally in order to effect agreements with owners. The Acts provide a sort of compulsory power in the rear ground, which prevents an owner being unreasonable in his attitude towards a scheme. Some of the more useful powers in this respect are those of being able to vary the bye-laws; of limiting the number of houses per acre; and of purchasing compulsorily any land required for the purposes of a scheme. In the same way, section 10 of our Bill as introduced gives a local authority power to alter the boundaries of any plots with a view to rendering them more suitable for building purposes, but it is unlikely that any local authority would use this power for any other purpose than that of trying to effect compromises in the method of re-arrangement, nor is it likely that the controlling authority would sanction any re-arrangement to which the majority of owners object unless most conclusive reasons for the same are given by the local authority. Under the English Act (section 55 and schedule IV) provisions may be inserted in a town-planning scheme in regard to the power of a local authority to make agreements with owners, but in our Bill as introduced there was no such direction. Possibly section 40 of the Bombay District Municipal Act will suffice in most cases, but in view of the fact that Notified Areas have not the full powers of a Municipality, and in view of the great importance attached in England to the making of agreements, it is suggested that in order to remove any possible legal objection that might hereafter be raised against any agreement that may be made in drawing up a town-planning scheme, and also to emphasize the importance of making agreements, our draft Act should specifically authorize a local authority to enter into any agreement in respect of any matters relating to a town-planning scheme. It might also be necessary to specify that the arbitrators' awards and valuations will not affect any terms and conditions that may be contained in an agreement entered into by the local authority and approved by the controlling authority. These suggestions have been embodied in our Bill as amended by the Select Committee.

17. *Private Roads.*—From what has been said above it can easily be surmised how important are the provisions of the law dealing with private roads in connection with the drawing up of town-planning schemes. Many local authorities are preparing schemes with no intention of spending upon them any more of their funds than the costs of survey. The future roads are aligned in consultation with the owners, who are left to demarcate them when they develop their estates. When the land which is opened up by a private road is more or less built over, the proper construction of the road is either done or enforced by the local authority at the cost of the holders of plots which front upon it. In England where estates are generally large this is a very convenient method of procedure, both from the point of view of the estate owner and the local

authority. The former does the first 'make-up' of a road, and if his plots do not sell he does not stand to lose so much as if he were compelled immediately to make up the road properly. On the other hand, if he is able to sell his plots and several buildings are erected, the local authority can enforce the proper construction of the road when they think it necessary. In Sálsette a large number of holdings are small, so that a group of such holdings corresponds to an estate in England, and a town-planning scheme could reserve land for private roads, and leave it to the local authority to enforce their proper construction when necessary under section 90 (*3*) of the District Municipal Act. The great defect of this section is that it makes no provision for apportioning the expenses amongst the owners concerned, and in practice the section is inoperative owing to the fact that all the owners of fronting plots are held jointly liable for any expenses that are incurred by the Municipality in causing a private road to be properly constructed.

The apportionment in England is made by the local authority and is almost invariably according to frontage (section 150, Public Health Act, 1875); though under the Private Street Works Act, 1892 (section 10), regard may be had to the greater or less degree of benefit to be derived by any premises from the works, and to the amount and value of any work already done by the owners or occupiers of any such premises.

The apportionment for such private road works is also authorized by the Panjáb District Municipal Act, section 171; by the Madras City Municipal Act, section 245; and by the Calcutta City Municipal Act, section 36. Under the Bengal District Municipal Act, section 181, the apportionment may be made in such manner as the Municipality may think fit. The amendment of the Bombay District Municipal Act is urgently required so as to allow for the apportionment of expenses, either by amending section 90 on the lines of the Panjáb Act or by amending section 156 on the lines of the Bengal District Municipal Act.

18. *Bye-laws.*—The number and rigidity of local bye-laws are very much greater in England than in the Bombay Presidency, but all the same there are some bye-laws with which the provisions of a town-planning scheme might clash, and it seems necessary that our Bill should contain some section similar to the last portion of section 55 (*2*) of the English Act, which arranges for the suspension of any particular bye-law or regulation when it is at variance with the provisions of a sanctioned town-planning scheme. This suggestion has now been carried out in the Bill as amended by the Select Committee.

XIII.—Conclusion.

19. In conclusion, I wish to record my thanks to Mr. Dickenson of the Local Government Board, London, for much valuable information, and also to the several Municipal officials who took so much trouble in explaining the details of town-planning schemes, and in particular to Mr. Rodgers, the Town Clerk of Bexhill, for the trouble taken by him on several occasions to explain the details of the working of each department of his Municipality.

E. G. TURNER.

30th April 1914.

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